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In the Supreme Court of the United States

OCTOBER TERM, 1945

PHIL HOWE, DAVID A. HOWE and JOANNE B. HOWE, Copartners trading as Howe & Company,
Petitioners,

vs.

FEDERAL TRADE COMMISSION,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT AND BRIEF IN SUPPORT OF PETITION.

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FEDERAL TRADE COMMISSION,
Respondent.

ERRATUM IN PETITION FOR WRIT OF CERTIORARI HERETOFORE FILED, DATED JULY 28, 1945

On page 2 of the petition for writ of certiorari, the following footnote should have been inserted, supporting an asterisk (*) that should be placed at the conclusion of line 4 of page 2 thereof after the symbol "(R. 28)":

> The order (R. 28) further directed petitioners to cease and desist from (2) "using the words 'favorite of the stars'. . . ." There is no evidence that such legend is unfair or deceptive. However, that subsidiary phrase had long since been deleted from some of the labels prior to the time of hearing before the Commission, (R. 222, 229) and since the time of hearing petitioners have removed it from the labels on all their products. Furthermore certain "other matters contained in the order have been complied with and are not in issue here" (R. 440). No issue is raised by petitioners here as to the propriety of any phase of the order except the requirement to delete their principal trade name "Hollywood".

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July 31, 1945

In the Supreme Court of the United States

OCTOBER TERM, 1945

PHIL HOWE, DAVID A. HOWE and JOANNE B. HOWE, Copartners trading as Howe & Company,

Petitioners,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Ninth Circuit

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

Your petitioners respectively show as follows:

SUMMARY STATEMENT OF THE MATTER INVOLVED

This is a petition for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit seeking a review of the above entitled cause reported in 148 Fed. (2d), 561 wherein that court affirmed an order of the Federal Trade Commission directing your petitioners to cease and desist (1) from using the term "Hollywood" to designate any product manufactured or distributed by the petitioners which is not, in fact, manufactured in Hollywood, California,

and from otherwise representing directly or by implication that any product distributed or sold by the petitioners is manufactured in Hollywood, California, when such is not the fact (R. 28).

Petitioners are engaged, and for many years last past have been engaged in the sale and distribution of cosmetics under the general trade name "Howe's Hollywood Cosmetics." (R. 185,191,198). The principal place of business of the petitioners has been in Seattle, Washington (R. 4) and the majority of the items distributed by the petitioners under the Hollywood trade name has been manufactured in places other than Hollywood, California (R. 33,227). However, the three principal items distributed and sold by the petitioners, constituting more than 52% of the total volume of their Hollywood line, were manufactured in Hollywood, California. (R. 418,419).

The complaint of the Federal Trade Commission (R. 1-9) and its findings (R. 18-30) and the opinion of the Circuit Court of Appeals (R. 439) are based primarily upon the theory that the use of the word "Hollywood" in connection with cosmetics gives the impression that such cosmetics are used or favored by people engaged in the motion picture industry, which is located in Hollywood, California, resulting in the consequent impression on the part of the purchasing public that such cosmetics are made in Hollywood, California. The complaint, the findings of the Federal Trade Commis-

sion, and the opinion of the Circuit Court of Appeals are based upon the fundamental premise that this impression is a false impression and that the use of the term "Hollywood" by the petitioners in the sale of their products constitutes a false and misleading representation in violation of the provisions of the Federal Trade Commission Act. (15 U. S. C. A. Sec. 41 et seq.)

The petitioners have not at any time engaged in advertising their products by newspapers, periodicals or radio (R. 140). It is undisputed that the sole use of the name "Hollywood" in connection with the sale of petitioners' products was and is confined to the use of such term upon the labels attached to the petitioners' products (R. 281, 279, 280, 283). It is the position of the petitioners that such use of the term "Hollywood" on its labels as a general trade name of its cosmetic products does not constitute any violation of the Federal Trade Commission Act and that the order of the Commission is (1) contrary to law and (2) is not supported by any evidence that such is unfair or deceptive.

STATEMENT AS TO JURISDICTION

The Supreme Court has jurisdiction to review the judgment here in question upon the following grounds:

1. The statutory provisions which sustain the jurisdiction of this honorable court are:

Title 28, U. S. Code Annotated, §347 and §348 [1]; and Title 15, U. S. Code Annotated, §45 (c) [2] com-

[1] APPENDIX (1)
[2] APPENDIX (2)

monly known as the Federal Trade Commission Act providing in part as follows:

> "The judgment and decree of the court (the Circuit Court of Appeals of the United States) shall be final except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in §347 of Title 28."

2. The findings of the Commission as to the unfair or deceptive nature of the trade name "Hollywood," as used by the petitioners, are not supported by any substantial evidence.

QUESTION PRESENTED

The question herein presented is whether or not a finding of the Federal Trade Commission to the effect that an advertiser's use of a trade name is unfair and deceptive can be sustained where such finding is not supported by any substantial evidence in the record.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT:

1. The greater proportion of the merchandise sold and distributed by the petitioners under the trade name "Hollywood" was actually manufactured in Hollywood, California, and the use of the word "Hollywood" upon petitioners' products is completely justified by that fact.

2. There is absolutely no evidence in the record that the petitioners' products, sold under the trade name of "Howe's Hollywood," are not used or favored by persons engaged in the motion picture industry. On the contrary, the only evidence in the record is that the petitioners' products distributed under such trade name have had a favorable reception among people engaged in the motion picture industry. Therefore, if the use of the word "Hollywood" in connection with cosmetics gives the impression that such cosmetics are used or favored by people engaged in the motion picture industry, which is located in Hollywood, California, there is absolutely no evidence in the record to sustain the finding that such impression is a false one.

PRAYER FOR WRIT OF CERTIORARI

WHEREFORE, your petitioners pray that a writ of certiorari issue under the seal of this court directed to the Circuit Court of Appeals of the United States for the Ninth Circuit commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of said court had in the case numbered and entitled on its docket "No. 10486, Phil Howe, David A. Howe and Joanne B. Howe, copartners trading as Howe & Company, petitioners, vs. Federal Trade Commission, respondent," to the end that this cause may be reviewed and determined by this court, as provided for by the statutes of

the United States; and that the judgment herein of said court be reversed by the court, and for such further relief as to this court may seem proper.

Dated, July 28th, 1945.

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